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FAMILY AND MEDICAL LEAVE ACT OF 1993

FEBRUARY 2, 1993.—Ordered to be printed

Mr. CLAY, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 1 which on January 5, 1993, was referred jointly to the Committee on Education and Labor, the Committee on Post Office and Civil Service, and the Committee on House Administration]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 1) to grant family and temporary medical leave under certain circumstances, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 35, strike line 11 and all that follows through page 46, line 17, and insert the following:

TITLE II—LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. LEAVE REQUIREMENT.

(a) CIVIL SERVICE EMPLOYEES.—

(1) IN GENERAL.—Chapter 63 of title 5, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

"§ 6381. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means any individual who—

"(A) is an 'employee', as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and

"(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

"(2) the term 'health care provider' means—

"(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

"(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

"(3) the term 'parent' means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

"(4) the term 'reduced leave schedule' means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

"(5) the term 'serious health condition' means an illness, injury, impairment, or physical or mental condition that involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment by a health care provider; and

"(6) the term 'son or daughter' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

"(A) under 18 years of age; or

"(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"§ 6382. Leave requirement

"(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

"(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

“(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

“(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

“(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee’s position.

“(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

“(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 6383(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

“(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

“(A) has equivalent pay and benefits; and

“(B) better accommodates recurring periods of leave than the regular employment position of the employee.

“(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

“(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee’s accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

“(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave under such subpara-

graph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

"(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

"(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

"(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

"§ 6383. Certification

"(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

"(b) A certification provided under subsection (a) shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

"(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, spouse, or parent; and

"(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

"(5) in the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

"(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may re-

quire, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

"(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

"(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

"(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

"(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

"§ 6384. Employment and benefits protection

"(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

"(1) to be restored by the employing agency to the position held by the employee when the leave commenced; or

"(2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

"(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

"(c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to—

"(1) the accrual of any employment benefits during any period of leave; or

"(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

"(d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.

"(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on

leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

“§ 6385. Prohibition of coercion

“(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

“(b) For the purpose of this section—

“(1) the term ‘intimidate, threaten, or coerce’ includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and

“(2) the term ‘employee’ means any ‘employee’, as defined by section 2105.

“§ 6386. Health insurance

“An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

“§ 6387. Regulations

“The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993.”

(2) TABLE OF CONTENTS.—The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

“SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

“6381. Definitions.

“6382. Leave requirement.

“6383. Certification.

“6384. Employment and benefits protection.

“6385. Prohibition of coercion.

“6386. Health insurance.

“6387. Regulations.”

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (C); and

(2) by adding at the end the following new subparagraph:

“(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or”.

EXPLANATION OF AMENDMENT

The committee amendment to H.R. 1 strikes all of title II and inserts a substitute text for the text of the introduced bill. The explanation of the provisions of the substitute text is contained in the explanation of the bill as set forth hereinafter in this report.

PURPOSE

The purpose of this legislation is to entitle employees to family leave in certain cases involving a birth, adoption, or a serious health condition of a child, spouse, or parent and to medical leave in certain cases involving a serious health condition of the employee, with adequate protection of the employees' employment and benefit rights.

COMMITTEE ACTION

On January 5, 1993, Representative William Ford (D-Michigan) introduced H.R. 1, the Family and Medical Leave Act of 1993, a bill to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition of a child, spouse, or parent and to medical leave in certain cases involving a serious health condition of the employee, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave. The bill was referred jointly to the Committee on Post Office and Civil Service, the Committee on Education and Labor, and the Committee on House Administration. All of the provisions of title II fall within the jurisdiction of the Committee on Post Office and Civil Service, and the committee's consideration of the bill was confined to these provisions. Title II of H.R. 1, as introduced, is substantially similar to title II of H.R. 2 as passed in the 102d Congress.

On October 17, 1985, the Subcommittees on Compensation and Employee Benefits and the Civil Service of the Committee on Post Office and Civil Service and the Subcommittees on Labor-Management Relations and Labor Standards of the Committee on Education and Labor held a joint hearing on the issue of parental and disability leave (Serial No. 99-36 [hereinafter cited as 1985 House Hearing]).

On March 4, 1986, Representative William Clay introduced H.R. 4300. The bill was jointly referred to the Committee on Post Office and Civil Service and the Committee on Education and Labor.

The Subcommittees on Compensation and Employee Benefits and the Civil Service of the Committee on Post Office and Civil Service held a joint hearing on H.R. 4300 on April 10, 1986 (Serial No. 99-56 [hereinafter cited as 1986 House Hearing]).

On June 11, 1986, the Committee on Post Office and Civil Service, by a recorded vote of 18 to 0 and with a quorum present, or-

dered H.R. 4300 favorably reported without amendment (H. Rept. 99-699, Part 1). The bill was not considered by the House of Representatives.

On February 3, 1987, Representative Clay introduced H.R. 925, a bill similar to H.R. 4300. On April 2, 1987, the Subcommittees on Compensation and Employee Benefits and the Civil Service held a joint hearing on H.R. 925 (Serial No. 100-8 [hereinafter cited as 1987 House Hearing]).

On May 7, 1987, the Subcommittee on the Civil Service approved H.R. 925 for full committee consideration, and on May 19, 1987, the Subcommittee on Compensation and Employee Benefits approved the bill for full committee consideration.

On February 3, 1988, the Committee on Post Office and Civil Service ordered H.R. 925, as amended, favorably reported by a voice vote, a quorum being present. The bill was not considered by the House of Representatives.

On February 2, 1989, Representative Clay introduced H.R. 770, a bill identical to H.R. 925. On April 12, 1989, the Committee on Post Office and Civil Service ordered H.R. 770, as amended, favorably reported by voice vote, a quorum being present. On May 10, 1990, the House approved H.R. 770 by a record vote of 237 to 187. On June 14, 1990, the Senate approved H.R. 770 by voice vote, clearing the measure for the President. The President vetoed H.R. 770 on June 29, 1990. On July 25, 1990, the House sustained the President's veto by a vote of 232 to 195.

On January 3, 1991, Representative Clay introduced H.R. 2, a bill identical to H.R. 770 as approved by the House in the 101st Congress. H.R. 2 was jointly referred to the Committees on Post Office and Civil Service, Education and Labor, and House Administration. On March 12, 1991, the Subcommittee on Compensation and Employee Benefits approved H.R. 2, with amendments, for full committee consideration. On March 13, 1991, the Committee on Post Office and Civil Service ordered H.R. 2, as amended, favorably reported by voice vote, a quorum being present.

On January 14, 1991, Senator Dodd introduced S. 5, a bill similar to H.R. 2, which was referred to the Committee on Labor and Human Resources. On May 30, 1991, S. 5, as amended, was reported to the Senate by the Committee on Labor and Human Resources (Report No: 102-68). On October 2, 1991, S. 5, as amended, passed the Senate by voice vote.

On June 27, 1991, H.R. 2 was reported, as amended, by the Committee on Post Office and Civil Service (Report No: 102-135 (Part II)). On November 13, 1991, the House adopted an amendment in the nature of a substitute and passed H.R. 2 by a recorded vote of 253-177. The amendment adopted by the House was similar to the language of S. 5, as passed by the Senate, and significantly altered the provisions of title II as reported by the committee. Among other changes in title II, the amendment provided for a combined total of 12 weeks family and medical leave rather than up to 18 weeks of family leave over a 24 month period and up to 26 weeks of medical leave over a 12 month period. The House took up S. 5, struck all after the enacting clause and substituted the language of H.R. 2, as passed.

On July 28, 1992, the Senate requested a conference. On August 4, 1992, the House agreed to a conference and the Speaker appointed conferees from the Committee on Post Office and Civil Service for consideration of title II of the Senate bill, and title II of the House amendment, and modifications committed to conference.

On August 5, 1992, the conferees agreed to file the conference report, and, on August 10, 1992, the conference report (H. Rept. 102-816) was filed. On August 11, 1992, the Senate agreed to the conference report by unanimous consent. On September 10, 1992, the House agreed to the conference report by a recorded vote of 241-161.

On September 22, 1992, the bill was vetoed by the President. On September 24, 1992, the Senate voted to override the veto by a recorded vote of 68-31. On September 30, 1992, the House failed to override the veto by a recorded vote of 258-169.

On January 27, 1993, the Committee on Post Office and Civil Service agreed to a unanimous consent request to consider H.R. 1. An amendment in the nature of a substitute to title II was offered by Congresswoman Pat Schroeder and adopted by voice vote. The amendment made technical and clarifying changes in the language of title II which are discussed in further detail later in this report. The Committee on Post Office and Civil Service ordered H.R. 1, as amended, favorably reported by voice vote, a quorum being present.

SUMMARY OF TITLE II OF THE BILL

Title II of H.R. 1, as amended by the committee, establishes a family and medical leave program specifically for Federal employees. It entitles an employee, during a 12-month period, to 12 weeks of job-protected family leave without pay upon the birth or placement for adoption or foster care of a child. H.R. 1 entitles a Federal employee to take family leave in connection with a serious health condition of a child, spouse or parent. The bill also entitles a Federal employee to job-protected medical leave without pay because of the employee's own serious health condition. Family and medical leave are in addition to any annual leave, sick leave, or other leave or compensatory time off otherwise available to the employee. An employee may choose to coordinate family leave or medical leave with any other leave time available. An employee may take medical leave or family leave to provide care for a child, spouse or parent with a serious health condition under a method involving a reduced workday, a reduced workweek, or some other alternative work schedule when medically necessary. The leave may be taken on a continuing or intermittent basis or any combination of the two. In cases involving the birth or placement of a child, family leave must be taken within 12 months following the event, and an employee and the employing agency must agree on a reduced leave schedule or intermittent leave if leave is to be taken in such a manner.

A Federal employee who uses family or medical leave is entitled to be restored to the position held immediately prior to taking family or medical leave or to an equivalent position. Any interference with an employee's right to take family or medical leave

through coercion, intimidation, or threat, including the conferring of or the promise to confer any benefit, is prohibited.

Title II of H.R. 1 includes provisions to help minimize any adverse impact on an agency. An employee is charged with providing to the agency, when possible, 30 days prior notice of the leave to be taken. The employee should attempt to schedule the leave to accommodate the needs of the agency. In cases involving a serious illness of the employee or the employee's child, spouse, or parent, the agency may require certification of the health condition from the health care provider. Where an employee is taking leave intermittently or on a reduced leave schedule due to the employee's or a family member's serious health condition, the agency may transfer the employee to a position providing equivalent pay and benefits that better accommodates the intermittent or reduced leave schedule.

Health insurance coverage continues during periods of family leave and medical leave for those employees enrolled in the Federal Employees Health Benefits Program. An employee must make arrangements with the agency to pay the employee's health insurance contribution.

The Office of Personnel Management (OPM) is authorized to prescribe the regulations necessary for the administration of the family and medical leave provisions.

HISTORY

In the early 1970s, efforts were made to use Title VII of the Civil Rights Act of 1964 (Public Law 88-352) and the equal protection clause of Article XIV of the United States Constitution to remedy discrimination against pregnant women and working mothers and fathers who sought to fulfill parental responsibilities. Setbacks in the U.S. Supreme Court led to passage, in 1978, of the Pregnancy Discrimination Act of 1978 (Public Law 95-555), an amendment to Title VII of the Civil Rights Act of 1964.

The effects of the Pregnancy Discrimination Act have been far-reaching. Employer policies requiring termination and mandatory leave for pregnant employees are now clearly illegal. Pregnant women are entitled to work until childbirth or until medical complications of pregnancy render their continued work attendance medically inadvisable, and they are entitled to return to work on the same basis as other temporarily disabled workers. Women who become disabled because of pregnancy-related conditions are entitled to paid sick leave, personal leave, disability benefits, medical insurance, and hospitalization on the same basis as other disabled workers. Moreover, Title VII has been interpreted to require that leave for the care of children be granted to fathers on the same basis as an employer grants leave to mothers. *Ackerman v. Board of Education of City of New York*, 387 F. Supp. 76 (S.D.N.Y. 1974). [EEOC Compliance Manual Sec. 626.6].

A 1986 Subcommittee on the Civil Service staff study of the parental leave policies of Federal executive branch agencies found that:

* * * in the absence of a national minimum standard for granting leave for parental purposes, the authority to

grant leave and to arrange the length of that leave rests with individual supervisors, leaving Federal employees open to discretionary and possibly unequal treatment. The lack of consistency also leads to differences between how men and women are treated in the case of maternity and paternity leaves. An individual requesting leave for parental reasons makes a request to his or her supervisor who has broad authority to grant or deny permission for leave and to determine the length of leave. In other words, the lack of clear federal policy on parental leave means that an employee's opportunity for obtaining adequate time off is subject to change. (Printed in the 1986 House Hearing p. 85.)

In 1987, the General Accounting Office (GAO) testified that, prior to implementing an agency-wide leave policy in 1982—

* * * an employee would seek unpaid leave for an extended period. It was in considering these requests where we found that managers might apply differing criteria for deciding whether unpaid leave would be approved. (1987 House Hearing p. 10.)

Testifying in 1987 on the family leave available to Federal employees under current policy, Ms. Eleanor Holmes Norton, then a Professor at Georgetown Law School, found serious problems with the discretionary nature of family leave:

We would advise that this constitutes a systemic difference in provision of a job benefit that makes out a prima facie case of violation of Title VII of the 1964 Civil Rights Act. (1987 House Hearing p. 32.)

As important as Title VII and the Pregnancy Discrimination Act have been, they do not address all of the employment related problems of pregnancy and childbirth. Title VII, as amended, is an anti-discrimination law. Its aim is to prohibit employers from treating persons differently on the basis of race, sex, religion, or national origin. Compliance with Title VII requires only that employers treat all employees equally.

Specifically, if an employer grants sick leave and provides disability and health insurance coverage to employees in general, it must, under the Pregnancy Discrimination Act, provide equal coverage to pregnant wage earners who become sick or disabled. If an employer denies benefits to its work force, it is in full compliance with anti-discrimination laws because it treats all employees equally. Thus, while Title VII, as amended by the Pregnancy Discrimination Act, has required that benefits and protection be provided to millions of previously unprotected women wage earners, it leaves gaps which an anti-discrimination law by its nature cannot fill. H.R. 1 is designed to fill those gaps.

FAMILY LEAVE (BIRTH OR PLACEMENT)

In the last half century, the increasing participation of women in the work force at large has created significant social changes in the United States. In 1975, 32.6 percent of married women with chil-

dren under the age of three were in the labor force. By 1992, 57.5 percent of these women were working. The Bureau of Labor Statistics has reported that women accounted for 60.2 percent of the growth in the civilian labor force between 1984 and 1992. Women represent the sole parent in 22.7 percent of all families with children under the age of 18. In addition, in 59 percent of married couple families with children under the age of 18, both parents work. By contrast, the family in which the husband is the sole wage earner and the mother is the homemaker—so long thought to be typical—now constitutes less than one-third of all married couple families, and only 15.4 percent of all families with children under the age of 18. Almost 40 million children, 63.5 percent of all children under the age of 18, live either in homes where both parents work or in homes in which the single parent works outside the home.

In the Federal Government, women made up 34 percent of the work force in 1973. According to OPM, women now make up 43 percent of the Federal work force.

Despite this revolution in the structure of the family, the United States, alone among industrial societies, has no national policy regarding parental leave. For Federal employees, the Federal Personnel Manual (FPM) treats pregnancy like any other medically certified temporary disability. Therefore, sick leave may be used only to cover the time required for physical examinations and to cover the period of incapacitation. Although the needs of a newborn extend beyond the mother's incapacitation, Federal employees who need additional time off must take annual leave or, at the discretion of the agency, leave without pay to meet those needs.

There is now no guarantee that Federal employees will receive the additional time off they require. Many workers are forced to make difficult choices between the need to provide necessary physical and emotional care for a new child and the need to maintain gainful employment. To promote the stability of the family as a social institution, the Federal Government should ensure that its policies reflect the economic reality in which families exist.

Title II of H.R. 1 addresses the need of parents for time off from work obligations when a child is born or brought into a family by providing up to 12 weeks of leave without pay. All Western and Eastern European countries require employers to grant such leave, as Dr. Sheila Kamerman of Columbia University School of Social Work has documented, and all provide for a period of leave longer than that proposed in title II of H.R. 1.

The amount of time allowed for parental leave—12 weeks—approximates the period of time that child development experts suggest as the very minimum for newborns and new parents to adjust to one another. Dr. T. Berry Brazelton, Associate Professor of Pediatrics at Harvard Medical School, recommends four months, explaining that the early months of adjustment to a newborn infant are a crucial opportunity for family bonding. The Advisory Committee on Infant Care Leave of the Yale Bush Center in Child Development and Social Policy recommends leave for a minimum of six months. (1986 House Hearing p. 23.)

New parents also need time to make appropriate day care arrangements. Given the current problems of availability and afford-

ability of child care, 12 weeks of leave may be required to establish a proper situation.

Such recommendations apply with equal force to the period necessary for newly adopted or foster children and their families to adjust to one another. In fact some adoption agencies require parents to be home at least three years with an adopted child. In her testimony at the 1985 hearing, Ms. Lorraine Poole, an employee of the City of Philadelphia, described the problems she faced in trying to adopt a child:

It was normal [adoption] agency procedure for the adoptive parent to leave the work place for a period of 6 months. This time, it was felt, was very important for both parent and child. * * * This was considered vital with the placement of infants. I had completed all those conditions of the adoptive agency, with one exception, the necessary time away from my place of employment.

I contacted the personnel division of the Philadelphia Recreation Department. The personnel officer listened as I explained what my need was, parental leave for adoption. There was a chuckle. She stated: "You've got to be in the hospital." I thought I had not made my meaning clear. I was not seeking maternity leave, but parental leave for adoption. It was then that I was told the only leave available for parents was maternity leave. * * *

I did submit a request for the use of vacation and personal leave for a period of six months. I was given approval for 2 weeks vacation. (1985 House Hearing p. 4-5.)

Providing sufficient parental leave not only benefits employees but also benefits employers by ensuring productivity. According to Catalyst, a New York-based research and consulting firm to major businesses on personnel policies:

A program that brings employees back to work before they are rested and ready may actually be more deleterious to productivity than allowing an extended leave. The odds are good that leave-takers who return too soon will not be fully productive or will make costly and needless mistakes * * *. When insufficient leave time results in an employee's attrition, the cost of replacing the employee can be substantial.

The 1986 Subcommittee on the Civil Service staff study found that some Federal agencies have developed parental leave policy statements. Others have collective-bargaining agreements providing specific maternity or parental leave benefits. Yet all 53 Federal agencies responding to the study assign responsibility for the final decision involving maternity, paternity, or adoption leave to the supervisor concerned. (1986 House Hearing p. 83-102.)

H.R. 1 brings standardization to this very inconsistent approach. It entitles a Federal employee to a maximum of 12 weeks of unpaid leave due to the birth or placement for adoption or foster care of a child. It is not the committee's intent to require that leave due to the birth or placement of a child begin on the date of the birth or placement. If an absence from work is necessary for a placement to

proceed, it is the intent of this legislation to afford the necessary leave. Similarly, even where it is not medically necessary, leave prior to an imminent birth may be an important factor in adjusting to parenthood. An employee remains responsible, however, for providing notice 30 days in advance of the date the employee intends to begin leave, where that is possible.

The parental leave provided under H.R. 1 is available to any parent. A father as well as a mother may be granted parental leave so long as the leave is requested to respond to one of the circumstances specified in the statute. The committee recognizes that a special "maternity leave" requirement may have the effect of denying women job opportunities. The knowledge that job-protected leaves were required for working mothers, and working mothers only, may encourage employing agencies to be reluctant to hire or promote women of child-bearing age. However, since employers would be required under H.R. 1 to provide job-protected leave for all employees, they would have little incentive to discriminate against women.

As importantly, Federal policy is designed to afford all Americans equal employment opportunities based upon individual ability. While women have historically assumed primary responsibility for family caretaking, a policy that affords women employment leave to provide family care while denying such leave to men perpetuates gender-based employment discrimination and stereotyping and improperly impedes the ability of men to share greater responsibilities in providing immediate physical and emotional care for their families.

FAMILY LEAVE (CARE FOR A FAMILY MEMBER)

Working parents of seriously ill children, including parents working for the Federal Government, face especially difficult problems and require the security of knowing they will get time off when they need it. This was highlighted in the 1986 hearing testimony of Ruth Milam, an employee of the Department of Labor, in which she described her family's experience coping with her daughter Sheila's leukemia:

We have been lucky enough to each have supervisors who have given us the time off we need* * *

I cannot imagine what we would have done if either of us had been told that we must be at work or we will lose our job.* * *

People should not be forced to make a decision between their work and time with their seriously ill children. The horrible confusion and distress of having a sick child should not be compounded by fear that you'll lose your job. (1986 House Hearing p. 4.)

Ms. Marilyn Young, an employee of the Social Security Administration, described the pull between work and family:

I don't know if you can fully understand the stress which is created when you have a family member who needs your care and your employer tells you no. My child

was only two months old, on a heart monitor and oxygen, and had to have constant care.

To have my leave request denied when I had kept my employer constantly informed on my situation, was a serious blow to me. (1987 House Hearing p. 67.)

Leave to care for a seriously ill or injured child is essential to provide that child the security of having a parent there in a time of crisis. If a child must undergo major surgery, the leave may be necessary to encompass the surgery itself and the subsequent recuperation period during which at least one parent must stay home to nurse and care for the child. In testimony prepared for a 1987 hearing before the Senate Labor and Human Resources Subcommittee on Children, Families, Drugs, and Alcohol, Dr. Jerome A. Paulson of the American Academy of Pediatrics explained:

For over thirty years, it has been well known that children who are hospitalized get well faster and have fewer complications when their parents are able to be with them. A child's physical and emotional well being heavily depend on parental participation during a serious illness.*

* *

Dr. Paulson went on to describe the difficulty in coming up with a more specific definition of "serious health condition":

It is also essential that there be flexibility to allow for individual variation that characterizes the unpredictable nature of childhood illness. Examples of factors that affect the prognosis of an injury, illness, or health condition include the age, weight, and medical history and status of the child. The family support system can also impact on the parents' ability to cope with the situation. Even geographical issues such as distance from the hospital can have an influence. The parent whose child is referred to a distant medical center may be in a different situation than the parent whose office is next door to the hospital.

Similarly, if a child's serious health condition requires that the child receive specialized services at school or be placed in a different school setting that provides those services, the parents may need the kind of leave provided by H.R. 1 to make satisfactory arrangements.

Further, for parents of children with disabilities, the choice of keeping them at home or placing them in institutions will often depend on whether the parents are able to keep their jobs while obtaining sufficient leave to provide their children with the support they require. According to Bonnie Milstein of the Consortium of Citizens with Developmental Disabilities:

The overwhelming majority of families now keep their [disabled] children at home. A major reason for this shift away from institutionalization is that study after study has proved the debilitating effects of institutionalization and its costliness. On the other hand, the individual with disabilities who is allowed to remain in a family environment has a much greater likelihood of learning the skills

necessary for independence and a fulfilling life in the community.

Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children—and who, therefore, find themselves in need of a work place accommodation for their child care responsibilities—are these children's adoptive, step, or foster parents, or their guardians, or sometimes their grandparent or other relative. The legislation deals with such situations by defining the term "son or daughter" to mean a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis. This definition ensures that the employees who are entitled to family leave are the people who have the actual day-to-day responsibility for caring for the child or who have a biological or legal relationship to the child. Thus a Federal employee who lives with, cares for, and acts as parent to the employee's grandchild would be entitled to family leave should the child need care for a serious health condition. So too, an employee who is divorced from the parent with custody would be able to take family leave to care for the child.

For an employee to be eligible for family leave, the child in question must be under 18 years of age unless that child is incapable of self-care because of mental or physical disability. This provision recognizes that some parents may need to take time off from work to care for the serious health conditions of their children who have reached legal maturity but are unable to take care of themselves.

On July 8, 1986, the Director of the Office of Personnel Management (OPM), Constance Horner, issued "New Personnel Guidance on Leave for Parental and Family Responsibilities." This guidance does not change existing personnel policy for Federal employees, but it does encourage Federal managers to be flexible in granting family leave. OPM's increased sensitivity to the needs of Federal employees was welcomed, as was the recognition that "responsiveness to family needs works in the long run to the advantage of the organization." Yet, the OPM guidance continues to place responsibility for granting family leave with each individual supervisor, a policy which has too often proved to be arbitrary and unfair.

Title II of H.R. 1 also allows Federal employees to take unpaid leave when a parent has a serious health condition. Families have traditionally cared for their disabled elderly. But, today, employees are squeezed between work demands and family responsibilities.

A briefing book prepared for the June 17, 1987, National Conference on "Issues for an Aging America: Employees and Eldercare", cosponsored by the Conference Board, the U.S. Administration on Aging, and the University of Bridgeport, reported that:

At present there are some 6.6 million dependent elders, that is, persons over the age of 65 with some need for assistance from others. The number of such person will climb rapidly during the remainder of this century and reach some nine million persons by 2000 A.D. and 19 million by 2040 A.D.

This explosion in the number of elderly coupled with the dramatic influx of women—the traditional family caregiver—into the work force has made “eldercare” a critical work issue. Ms. Eleanor Holmes Norton explained this problem:

According to a Department of Health and Human Services estimate, 2.2 million people, predominantly women, cared for 1.2 million frail elderly people in 1982. Approximately one million of them were employed for some time during the care-giving experience. And this, of course, is in addition to the more familiar figures for mothers with children who are young.

Reliance on healthier family members is often the most cost-efficient and desirable way to care for the elderly. But this care cannot be rendered with mirrors. If no accommodation to this need is made on the job, the result will almost surely be an increasing shift of care to high cost professional institutions, much of it at taxpayers' expense. (1987 House Hearing p. 33.)

Danna Friedman of the Conference Board echoes the fact that eldercare is very much a work place issue:

The business community is about to feel the effects of a coordinated effort to show why it is in their best interests to help those who care for elderly relatives. Results of Federally funded research will document the problems faced by such employees and substantiate the effects on performance. These data make the case for care of the elderly as a bottom-line business concern, and establish the corporate rationale for involvement. (“Eldercare: The Employee Benefit of the 1990s?” Across the Board, June 1986, p. 45.)

The briefing book for the National Conference on Issues for an Aging America (at page 4) stresses the need for flexible work policies and cites evidence that the lack of such flexible policies can force caregivers to quit their jobs.

Caring for the elderly creates financial and emotional strains especially on working families. Allowing unpaid family leave to be used in connection with a serious health condition of a parent would greatly alleviate the pressure on the worker and serve to retain quality employees in the work force.

For all of the same reasons that the committee has provided for leave to care for a child or parent, title II of H.R. 1 also entitles Federal employees to take leave to care for a spouse. Traditionally, in marriage, couples pledge, “in sickness and in health”, to love and care for each other. Family leave allows spouses to fulfill this obligation by allowing a federal employee appropriate leave to care for a spouse. Where medically necessary, leave to care for a spouse with a serious health condition may be taken intermittently or on a reduced leave schedule. A policy that permits leave to care for a child or parent, while denying leave to care for a spouse, is untenable.

Family leave is a new entitlement in addition to any annual leave, sick leave, or other leave or compensatory time off available to an employee. An employee may choose to take family leave in combination with any other available leave. An employee who

takes family leave is entitled to be restored to the position held by the employee immediately before taking the leave or to an equivalent position.

MEDICAL LEAVE

Existing law (5 U.S.C. 6307) entitles Federal employees to sick leave but provides no guarantee of time off for extended periods of illness or injury. Leave without pay may be requested, but it is granted at the discretion of the employing agency. An employee cannot be certain in advance that he or she will receive the needed leave. The Federal Government treats pregnancy like any other medically certified temporary disability. Employees may use available sick leave to cover medical appointments and any period of incapacitation. Leave without pay also may be granted at the discretion of the agency.

Title II of H.R. 1 would entitle a Federal employee to a maximum of 12 weeks a year of job-protected leave without pay for a serious health condition which renders the employee unable to perform the functions of such employee's position. This medical leave is a new leave entitlement and is in addition to any annual leave, sick leave, or other leave or compensatory time off available to the employee. The 12 week period, however, is the maximum period of leave an employee is entitled to for both family and medical leave. To the extent that an employee has previously taken family leave, the employee's entitlement to medical leave may be less than 12 weeks. Conversely, where an employee has previously taken medical leave, the employee's entitlement to family leave may also be reduced according to the amount of medical leave previously taken and when it was taken. The employee may choose to take the medical leave in combination with any other type of leave.

The committee is providing an entitlement of up to 12 weeks of unpaid family and medical leave. The committee does not intend that this entitlement should in any way diminish the authority of an agency to grant leave without pay to employees for humanitarian or other legitimate reasons at the discretion of the agency.

The employee may take the 12 weeks of leave on a schedule designed to accommodate the employee's specific medical problem. The leave can be taken on either a continuing or intermittent basis; in the form of a reduced workday, a reduced workweek, or other alternative work schedule; or through a combination of any such methods. The purpose of this leave is to accommodate all types of illnesses and injuries and to afford an individual the opportunity to return to work.

The test of whether a Federal employee is entitled to medical leave is two-fold: First, is the employee "unable to perform the functions of such employee's position"? And second, is the inability to perform those functions due to a "serious health condition"? It is not necessary that an employee literally be so physically or mentally incapacitated that he or she is unable to work in order to meet the requirement of being "unable to perform the functions of the position of such employee." For example, an employee undergoing kidney dialysis generally may be able to perform the functions of the employee's position. The employee must, nevertheless, be away

from work to receive the dialysis treatment. It is the intent of this legislation to afford medical leave for such purposes. An employee who must be away from work to receive medical treatment meets the requirement of being unable to perform his or her functions.

The two-fold test of inability to work and serious health condition also serves to ensure the availability of leave for serious health conditions. The term "serious health condition" is defined to mean an illness, injury, impairment, or physical or mental condition which involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment, or continuing supervision, by a health care provider.

This definition is intentionally broad to cover various types of physical and mental conditions for which employees may need leave. The committee intends that agencies take cognizance of individual circumstances in determining the appropriateness of leave requests. Given this, however, agencies must be especially careful to review implementation of this legislation to ensure it is not being administered in a discriminatory manner. The definition is intended to cover pregnancy, childbirth, and all attendant conditions.

Under this definition, the illness or condition must involve care or continuing treatment or supervision. The employee need not be an inpatient or undergoing treatment at the time the leave is requested to qualify as having a "serious health condition." Thus, an employee with a heart condition may require leave as a means of temporarily relieving the stress associated with work. Similarly, a pregnant woman who is unable to work due to severe morning sickness would qualify for leave under this provision even if she need not go to the hospital or the doctor to treat the condition each day.

An employee with a serious health condition may be unable to work simply because of the need to undergo medical treatment. For example, an arthritic employee may need periodic physical therapy; a cancer patient may require chemotherapy treatments. It is in the interest of the Federal Government to accommodate these periods of treatment and provide the employee with the maximum opportunity to return to work for a portion of the day or week. The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within even the most modest sick leave policies. Conditions or medical procedures that would not normally be covered by the legislation include minor illnesses which last only a few days and surgical procedures which typically do not involve hospitalization and require only a brief recovery period. Complications arising out of such procedures that develop into "serious health conditions" will be covered by the Act.

H.R. 1 provides that an agency may require certification from a health care provider of the need for an employee to take medical leave or leave to care for a family member with a serious health condition. H.R. 1 further provides that, where an agency has doubts regarding the validity of such certification, it may, at its expense, require the employee to obtain the opinion of a second health care provider. Where the opinions of the initial health care provider and the second health care provider differ, the agency, at

its expense, may require the employee to see a third health care provider mutually agreed upon by the employee and the agency. The opinion of the third health care provider regarding the need for leave shall be binding upon the agency and the employee.

These provisions have been included to ensure that the leave provided by this legislation is not abused. The committee recognizes, however, that an employee may not be able to provide certification at the same time that it is necessary to begin leave. The committee also recognizes that, in circumstances where an agency questions the initial certification, there is likely to be a time lapse before the employee is able to see a second or third health care provider. It is the committee's intent that, to the extent that an employee is unable to provide certification at the time it is necessary to begin leave or if the agency questions the validity of the initial certification provided by the employee, an agency should, nevertheless, grant provisional leave pending final certification. If, ultimately, the employee is unable to provide the required certification, the leave granted provisionally should be charged to the employee's appropriate paid leave account. In addition, appropriate disciplinary action should be taken against employee who knowingly provide false certification of the need for leave. Finally, when it is possible for an employee to do so, it is the committee's intent to require the employee to provide initial certification, when an agency requests such certification, before leave begins. In all circumstances, employees are required to provide certification, when requested, within a reasonable period based upon the circumstances involved. Additionally, where an employee is taking medical leave on an intermittent or reduced leave schedule, the certification must include the dates on which the employee is expected to receive treatment and the duration of that treatment. In cases where an employee is taking leave on an intermittent or reduced leave schedule to provide care for a family member with a serious health condition, the certification must include an estimate of the amount of time that the employee is needed to care for the family member.

H.R. 1 defines a health care provider as a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices and any other person determined by the Director of the Office of Personnel Management (OPM) to be capable of providing health care services. To qualify for medical leave or leave to provide care for a family member with a serious health condition, the employee or the family member must be receiving inpatient care in a hospital, hospice, or residential medical facility or continuing treatment by a health care provider. Generally, the employees receiving treatment will be paying for that treatment through participation in the Federal Employee Health Benefits Program (FEHBP) and those costs will be partially shared by the Government in the form of FEHBP premiums. In some circumstances, a medical doctor will be the most expensive alternative among other qualified health care providers. It is, therefore, in the interest of both Federal employees and the taxpayers for the Director of OPM to exercise the discretionary authority granted by the legislation to designate other appropriate health care providers. The committee also notes that, if administered too narrowly, the requirement that an employee or

family member be receiving continuing treatment from a health care provider in order for the employee to qualify for medical leave or leave to care for a family member with a serious health condition could have the effect of denying any leave to practicing Christian Scientists on the basis of their religious beliefs. The committee, therefore, strongly urges that, for the purposes of this legislation, the Director designate Christian Scientist practitioners as health care providers in appropriate circumstances.

IMPACT ON AGENCY

Title II of H.R. 1 includes provisions to help minimize the impact of family and medical leave on an employing agency. An employee is required to provide, when possible, 30 days' prior notice to the agency of the leave to be taken and to make a reasonable effort to schedule the leave so as not to disrupt the operations of the employing agency. The committee recognizes that there will be events beyond the control of the employee that require an employee to begin family or medical leave before the employee is able to provide the full 30 days notice. The notice requirement is intentionally qualified in order that employees in such circumstances are not denied leave. In such circumstances, the employee remains responsible, however, for providing the agency as much notice as is practical given the individual situation.

OPM Deputy Director James Colvard acknowledged a similar provision in his April 2, 1987, hearing testimony but stated that:

While title II does require an employee who has a foreseeable need to use family or medical leave to make a reasonable effort to inform the agency in advance of this need, it grants the employee a unilateral right to schedule and take the leave. This situation limits the agency's options for dealing with the absence and could result in unfair burdens on co-workers. (1987 House Hearing p. 29.)

According to Dr. Colvard, "the essence" of OPM's objection to the bill was that "it abandons any effort to balance the employee's need for leave with the agency's need to get the public's work done." (Ibid, p. 27.) Others disagree.

In her testimony, Ms. Judy Farrell, Project Coordinator of the Economic Policy Council of the United Nations Association, described other instances of job-protected leave within the Federal Government where supervisors continue to manage:

Managers already deal, on a regular basis, with employees leaving their job either temporarily or permanently. In fact, employers do cope with leaves of absence required for jury service and for military leave for reservists and members of the National Guard. I would just like to quote a statement from a publication of the Office of the Assistant Secretary of Defense, National Committee for Employers, Support of the Guard and Reserve, "Almost all members of the National Guard and military Reserve units take part in some type of training, whether weekend drills, summer camp or special training. To attend this training, reservists often have to take time off from their jobs, with

absences lasting from a few hours to a few months. Federal law protects reservists against being fired or denied certain employment benefits because their military activities interfere with their jobs." (Ibid, pp. 94-95).

Since 1982, the GAO has provided its employees up to 26 weeks of unpaid, job-protected parental leave. Comptroller General Charles A. Bowsher testified that providing this leave did not present an insurmountable managerial problem:

They [headquarters and regional offices] reported that they have not encountered serious managerial difficulties associated with the policy. Professional staff and their assignments can be shifted according to need. Extended absences by clerical and administrative personnel are a bit more complicated to accommodate. But reassigning some tasks, perhaps coupled with compensatory time off for extra hours worked, is usually sufficient to ease a particular situation. (Ibid, p. 13.)

In fact, the committee believes that offering job-protected family and medical leave will enhance the productivity and morale of the Federal work force and make the Federal Government a more attractive employer. This has been the experience of General Foods Corporation, as Kathleen C. McDonough, Director of Corporate Issues, pointed out in 1985. After explaining that General Foods offers maternity leave, child care leave, parental leave and flexible time, part-time, or job-sharing arrangements, Ms. McDonough concluded that:

General Foods believes this policy to meet the twin tests of responsiveness to contemporary employees' needs and competitiveness with parental leave plans of other employers. We believe that these policies reflect society as it is and allow us to attract and retain superior employees in the fulfillment of our business objectives. (1985 House Hearing p. 64-65.)

In addition, the Comptroller General testified in 1987 that:

While costs are associated with unpaid leave under current procedures. GAO derives some benefits from its parental leave policy, intangible though they may be. The improved morale of our new parents and their good feelings toward the agency are obviously a big plus. . . .

I suspect, but am not in a position to demonstrate, that our policy has also helped us to attract and retain good employees who might otherwise have considered resigning if faced with the competing demands of very early parenthood and an employer insensitive to those demands. (1987 House Hearing p. 14.)

EMPLOYMENT AND BENEFITS PROTECTION

Employees who take family or medical leave as provided under this legislation generally are to be treated as employees on LWOP are currently treated. An employee on family or medical leave is not entitled to any right, benefit, or position of employment to

which the employee would not have been entitled had the employee not taken leave. For example, if the employee's position would otherwise have been eliminated due to a reduction-in-force, the fact that the employee is on family or medical leave does not immunize the employee from displacement. In addition, an employee is not entitled to accrue employment benefits during any period of family or medical leave except as otherwise provided by or under law. This does not mean, and is not intended to mean, that an employee does not accrue any employment benefits. Current law provides, for example, that employees on LWOP continue to earn retirement credit for the first six months of such leave. Since the committee intends that family or medical leave be treated as LWOP, employees on family or medical leave would, in this example, continue to earn retirement credit until such time as this LWOP exceeds 6 months. An employee who substitutes accrued or accumulated paid leave for the unpaid leave otherwise provided by this title remains an employee in pay status.

As introduced, title II of H.R. 1 provided that, except as otherwise provided by law, employees were not to accrue seniority or any other employment benefit while on family or medical leave. The amendment adopted in committee deleted the word "seniority." The word "seniority" was dropped to ensure that employees on family or medical leave do not forfeit length or service credit in circumstances where employees on leave without pay status otherwise earn such credits. Generally, it is not the intent of the committee to afford length of service credit to employees on family or medical leave in circumstances in which similarly situated employees on leave without pay would not earn such credit.

There are instances in which employees on family and medical leave are intentionally treated differently than other employees on LWOP. Employees on LWOP may continue in agency sponsored health plans for up to 1 year. While such employees remain ultimately responsible for the employee's portion of the premium, agencies need not require that the employee continue to pay the employee's portion of the premium currently. Nor is it the committee's intent to impose such a requirement. However, for purposes of family or medical leave as provided under this legislation, employees electing to continue agency provided health coverage must make arrangements with the agency to pay their share of the premium currently.

Second, there is no limit prescribed by law or regulation on the amount of LWOP that can be granted. This legislation is not to be interpreted as either establishing a limit on LWOP or preventing an agency from granting LWOP, at its discretion, to an employee who has exhausted the employee's entitlement to family or medical leave. An employee's entitlement to family and medical leave, however, does not exceed 12 weeks.

Finally, this legislation provides that employees returning from family or medical leave shall be returned to the same or an equivalent position as the employee held prior to taking leave. The committee recognizes that to return an employee, in every instance, to the same position may, on rare occasions, impose severe hardship on the agency's ability to fulfill its mission. The committee has provided the agency the ability to place an employee in an equivalent

position to provide the agency with flexibility in such unusual circumstances.

However, it is the committee's intent that, whenever possible, an employee should be returned to the same position. In the exceptional case where doing so would impose extreme hardship on the agency, it is the committee's intent that the employee be placed in a position that offers equivalent responsibilities as well as equivalent benefits, pay, status, and other terms and conditions of employment.

There also exists the possibility that an agency manager, feeling pressure to complete job assignments, could coerce an employee not to take family or medical leave. Accordingly, no employee may intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to job-protected family or medical leave. This includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation). This prohibition does not include consultations or discussions concerning the scheduling of family or medical leave for the purpose of minimizing the disruption of the operations of the employing agency.

Under the Civil Service Reform Act of 1978, the Special Counsel of the Merit Systems Protection Board is responsible for investigating certain violations of civil service laws. The committee intends that the Special Counsel aggressively pursue any violation of this Act.

Title II of H.R. 1 allows an employee who is enrolled in a health plan under the Federal Employees Health Benefits Program to continue such health insurance coverage during a period of family or medical leave. A payment arrangement would have to be arranged between the agency and the employee to cover the employee's contributions.

OPM is required to prescribe regulations necessary for the administration of the family and medical leave programs. Generally, the regulations should be consistent with the regulations issued by the Secretary of Labor pursuant to this Act to the extent that the language of title II conforms to the language of title I and title I does not otherwise conflict with Federal civil service law and its administration. The committee notes, however, that title I establishes a minimum labor standard that must be applied in a variety of work place settings with widely different personnel practices. Title II, on the other hand, establishes terms and conditions of employment for a single work force with common personnel practices. Given this difference, and in light of the intent of this legislation to assist employees, the committee sees no inconsistency in OPM issuing regulations under title II that differ from those issued by the Secretary of Labor where the effect of OPM's regulations is to better enable Federal employees to benefit from the leave provided by this legislation. The committee believes that the provisions of Title II affecting Federal employees can be adequately enforced using existing grievance procedures established by a collective-bargaining agreement or by agency management.

CONCLUSION

Title II of H.R. 1 would establish a universal floor below which the Federal Government could not sink in accommodating important family needs of employees. Specifically, the bill would create reasonable periods of time during which Federal employees could take leave for medical reasons, early child-rearing, or to care for seriously ill children, spouses, or parents without the risk of termination or retaliation. It thus recognizes the dramatic change in the work force due to the growing participation of women, especially mothers. Perhaps most importantly, it addresses the needs of the most vulnerable of wage earners, the single woman head of household. It speaks to that crucial intersection between job and home where family needs clash with the demands of the work place. The typical wage-earning woman in the United States will have two children during her years of employment. Over the course of a working lifetime the amount of leave associated with caring for those two infants is small, particularly when the benefits to family and society are weighed in the balance.

Ms. Eleanor Holmes Norton framed this legislation best:

It is difficult to think of legislation passed in the last 30 years to benefit women that has had a greater impact on the wellbeing of the American family than Title VII of the 1964 Civil Rights Act, it was my great privilege to administer, and other legislation guaranteeing equal employment opportunity for women. Yet none of that legislation was as explicitly for the benefit of the family as the FMLA.

This legislation, as much as any you have had before you, makes clear the inescapable link between benefits for working women and benefits for the entire family.

The disarray in much of family life in the United States today has proceeded from the economy's demand that women work, coupled with society's failure to accommodate its institutions to this economic reality. (1987 House Hearing, p. 31.)

H.R. 1 should not create a burden for the Federal Government as an employer. In fact, the committee believes that this bill will result in significant benefits to the Government through enhanced worker morale, productivity, and retention of quality employees. In many agencies, employees already receive needed time off for medical problems and for family leave. The bill simply establishes a clear Federal policy and ensures that all employees are treated fairly and equitably.

SECTION ANALYSIS OF TITLE II

SECTION 201. FAMILY AND MEDICAL LEAVE

Section 201(a)(1) amends chapter 63 of title 5, United States Code, by adding a new subchapter V—Family and Medical Leave—containing the following new sections.

SECTION 6381. DEFINITIONS

Paragraph (1) of section 6381 defines "employee" to mean an "employee" as defined by section 6301(2) of title 5, United States Code, who has completed a minimum of 12 months of service as an employee, excluding individuals employed by the District of Columbia government and individuals employed on a temporary or intermittent basis. Physicians, dentists, and nurses in the Veterans Health Services and Research Administration of the Department of Veterans Affairs, and teachers or individuals holding teaching positions in the Department of Defense Dependent Schools are specifically included in the definition of "employee".

Paragraph (2) defines "health care provider" to mean a doctor of medicine or osteopathy authorized to practice medicine or surgery by the State in which the doctor practices and any other person capable of providing health care services as designated by the Director of the Office of Personnel Management.

Paragraph (3) defines "parent" to mean a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

Paragraph (4) defines "reduced leave schedule" as a schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Paragraph (5) defines "serious health condition" to mean an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice, residential medical care facility, or continuing treatment by a health care provider.

Paragraph (6) defines "son or daughter" as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under age 18 or who is age 18 or older and incapable of self-care due to a mental or physical disability.

SECTION 6382. LEAVE REQUIREMENT

Subsection (a) provides that, subject to the restrictions of section 6383, an employee is entitled to a total of 12 administrative workweeks of leave over any 12-month period because of the birth of a son or daughter and in order to provide care of that child; because of the placement for adoption or foster care of a son or daughter; in order to provide care for a spouse, child, or parent of the employee if such spouse, child, or parent has a serious health condition, and because of a serious health condition that makes the employee unable to perform the functions of the employee's position. Leave for the birth or placement of a child must be taken within 12 months of the birth or placement.

Subsection (b) provides that leave based on the birth or placement of a child may be taken intermittently or on a reduced leave schedule only with the approval of the agency and that leave to care for a family member with a serious health condition or leave due to the employee's serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary. Leave taken intermittently or on a reduced leave schedule is to be subtracted from the employee's overall family and medical leave balance on an hour-for-hour basis. An employee who, because

of a serious health condition or in order to care for a family member with a serious health condition, takes leave on an intermittent or reduced leave schedule basis may be transferred temporarily to an alternative position that better accommodates the leave schedule as long as the new position provides equivalent pay and benefits.

Subsection (c) provides that family and medical leave shall be leave without pay, except as provided in section (d).

Subsection (d) provides that an employee may substitute accrued or accumulated annual or sick leave for any part of the 12-week period of family and medical leave, except that an agency shall not be required to provide paid sick leave in circumstances in which the agency would not normally provide paid sick leave.

Subsection (e) provides that where an employee intends to take leave for the birth or placement of child, the employee shall provide 30 days' notice, or such notice as is practicable, of the employee's intention to take such leave. Where an employee intends to take leave to care for a family member with a serious health condition or due to the employee's own serious health condition, the employee, subject to the approval of the health care provider, must make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the agency and must provide 30 days notice, or such notice as is practicable, of the employee's intention to take such leave.

SECTION 6383. CERTIFICATION

Subsection (a) provides that an agency may require that a request for leave to provide care for a family member with a serious health condition or due to the employee's own serious health condition be supported by a certificate issued by the health care provider of the family member or employee, as appropriate. The employee shall provide such certification to the agency in a timely manner.

Subsection (b) provides that the certification shall be sufficient to justify the leave if it states the date on which the serious health condition commenced; the probable duration of the condition; the appropriate medical facts regarding the condition; and, depending on whether the employee is taking leave to provide care for a family member or due to the employee's own serious health condition, a statement that the employee is needed to care for such family member and an estimate of the amount of time the employee will be needed, or a statement that the employee is unable to perform the functions of his or her position. Where leave is to be taken intermittently or on a reduced leave schedule for planned medical treatment, the certification should include the dates on which treatment is expected to be given and the duration of such treatment.

Subsection (c) provides that, when the agency doubts the validity of the certification provided by the employee pursuant to section (a), the agency may require, at the expense of the agency, that the employee obtain certification from a second health care provider of the agency's choice, provided the second health care provider is not employed on a regular basis by the agency.

Subsection (d) provides that, when the certification provided under section (c) differs from the original certification provided under section (a), the agency, at its expense, may require the employee to obtain certification from a third health care provider mutually agreed upon by the agency and the employee. The opinion of the third health care provider concerning the information certified under section (b) shall be binding upon the employee and the agency.

Subsection (e) provides that an agency may require, at the agency's expense, subsequent recertifications on a reasonable basis.

SECTION 6384. EMPLOYMENT AND BENEFITS PROTECTION

Subsection (a) provides that any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave, to be restored to the position held by the employee when the leave commenced or restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

Subsection (b) provides that taking leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the commencement of leave.

Subsection (c) provides that, except as otherwise provided by or under law, a restored employee is not entitled to the accrual of any employment benefits during any period of leave provided under section 6382 or to any right, benefit, or position of employment other than those to which the employee would have been entitled had the employee not taken the leave.

Subsection (d) provides that, as a condition of restoration for employees who take leave due to their own serious health condition, an agency may require an employee to receive certification from the health care provider of the employee that the employee is able to resume work. Agencies adopting such a policy as a condition of restoration must apply the policy uniformly to all employees of the agency.

Subsection (e) provides that an agency may require an employee on family or medical leave to report periodically on the employee's status and intention to return to work.

SECTION 6385. PROHIBITION OF COERCION

Subsection (a) prohibits an employee from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to job-protected leave.

Subsection (b)(1) provides that the terms "intimidate, threaten, or coerce" include promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Subsection (b)(2) provides that, for the purposes of this section, the term "employee means any employee as defined in section 2105 of title 5, United States Code.

SECTION 6386. HEALTH INSURANCE

Section 6386 provides for the continuation of health insurance coverage during family or medical leave. An employee who is enrolled in a health benefits plan under the Federal Employees Health Benefits Program may elect to continue health insurance coverage during a period of family or medical leave and arrange to pay into the Employees Health Benefits Fund the appropriate employee contributions on a current basis.

SECTION 6387. REGULATIONS

Section 6387 requires the Office of Personnel Management (OPM) to prescribe regulations necessary to administer the provisions of the new subchapter V of chapter 63. Such regulations shall, to the extent appropriate, be consistent with those prescribed by the Secretary of Labor to carry out title I of this Act.

Section 201(a)(2) of the bill amends the table of contents of chapter 63 of title 5, United States Code, to reflect the addition of the new subchapter V.

Section 201(b) amends section 2105 (c)(1) of title 5, United States Code, to provide that employees of nonappropriated fund instrumentalities are covered by the provisions of the new subchapter V of chapter 63.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974, as amended, is set forth below.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, January 28, 1993.

Hon. WILLIAM L. CLAY,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed Title II of H.R. 1, the Family and Medical Leave Act of 1993, as ordered reported by the House Committee on Post Office and Civil Service, January 27, 1993. CBO estimates that enactment of this title would not result in significant additional costs to the Federal Government and would not affect pay-as-you-go scoring.

Title II of H.R. 1 would allow employees of the Federal Government up to 12 weeks of leave without pay during any 12-month period, in addition to any other type of leave, for the birth, adoption, or foster care of a child, to care for a sick spouse, child, or parent, or when the employee is unable to work because of a serious health condition. In addition, Title II would guarantee job protection and allow for continuation of certain benefits for employees who take such leave.

Under current law, there is no comprehensive federal policy on parental and medical leave. The Office of Personnel Management provides guidelines for granting leave for various purposes, but im-

plementation of leave policy is up to the discretion of each employee's supervisor.

Based on information from a number of federal agencies, it appears that employees who currently take leave without pay for purposes encompassed by H.R. 1 generally take it for periods of time shorter than authorized by the bill. Thus, enactment of this bill could result in more leave without pay for affected federal employees, although there is no basis for predicting how much additional leave might be taken.

Whether this additional leave would increase agencies' costs depends on whether the agencies would hire temporary replacements and what salary and benefits they would provide. A General Accounting Office study of private firms' practices indicates that in many cases no temporary replacements are hired. While no comparable information is available regarding federal agencies, we believe that, in aggregate, granting employees leave without pay for extended periods does not result in costs greater than if the employees continued to work—in part because the salaries and benefits of temporary replacements will sometimes be less than those of the permanent employees and in part because sometimes replacements will not be hired. To the extent that agencies have to hire replacement personnel, some additional costs could result from increased recruiting and personnel administration, but we do not expect such costs to be significant.

Enactment of Title II would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mickey Buhl, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director*.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Compensation and Employee Benefits is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of its hearings and deliberations, the subcommittee has concluded that there is ample need and justification for enacting this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 1(l)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 1 will have no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

* * * * *

§ 2105. Employee

(a) * * *

* * * * *

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws administered by the Office of Personnel Management, except—

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938; [or]

(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or

(E) *subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or*

* * * * *

Subpart E—Attendance and Leave

* * * * *

CHAPTER 63—LEAVE

SUBCHAPTER I—ANNUAL AND SICK LEAVE

Sec.
6301. Definitions.

* * * * *

SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

6381. Definitions.
 6382. Leave requirement.
 6383. Certification.
 6384. Employment and benefits protection.
 6385. Prohibition of coercion.
 6386. Health insurance.
 6387. Regulations.

* * * * *

SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

§ 6381. Definitions

For the purpose of this subchapter—

- (1) the term “employee” means any individual who—

(A) is an “employee”, as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and

(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

- (2) the term “health care provider” means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

- (3) the term “parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

(4) the term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee;

- (5) the term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider; and

- (6) the term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

§ 6382. Leave requirement

(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 6383(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

§ 6383. Certification

(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

(b) A certification provided under subsection (a) shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, spouse, or parent; and

(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

(5) in the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the

agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

§ 6384. Employment and benefits protection

(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

(1) to be restored by the employing agency to the position held by the employee when the leave commenced; or

(2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to—

(1) the accrual of any employment benefits during any period of leave; or

(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.

(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

§ 6385. Prohibition of coercion

(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

(b) For the purpose of this section—

(1) the term “intimidate, threaten, or coerce” includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and

(2) the term "employee" means any "employee", as defined by section 2105.

§ 6386. Health insurance

An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

§ 6387. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regulations prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993.

* * * * *

SUPPLEMENTAL VIEWS OF CONSTANCE A. MORELLA

I strongly support legislation to establish a comprehensive family and medical leave program for the nation. The American public views family and medical leave as a top priority. Gallup and Peter Hart polls indicate that 80 percent of registered voters favor unpaid leave for employees who need the time to care for a newborn, recently adopted, seriously ill child, or illness of a family member.

As society has changed, we have always adjusted our labor protection standards to meet the changing workforce. According to the Bureau of Labor Statistics, 66.6 percent of all women with children under 18 and 54.5 percent of mothers with infants under the age of three were employed. The average working, married woman with children contributes 41.3 percent to the total family earnings. In fact, the majority of women with children work because of economic need. Our country has one of the highest rates of working women in the world. Though women have entered into the workforce in greater numbers, they continue to be the primary caregivers of children, elderly parents and relatives. It is expected that women will spend about 17 years caring for children and 18 years caring for an elderly relative.

However, H.R. 1 is not just a bill for women; men need the same minimum protection in our society. Clearly, a minimum standard is needed, similar to child labor laws, the minimum wage, and health and safety standards. The United States is the only industrialized western nation that still does not offer this minimum protection to its workers. America's strongest competitors, Japan and West Germany, guarantee three months paid family leave with full job guarantees.

This legislation provides the bare minimum—12 weeks of unpaid, job-protected leave each year for a combination of family or medical leave. Previous bills gave the federal sector a more comprehensive leave provision, though still unpaid. I am disappointed that the original provision was not retained for federal employees; yet, I do realize that uniformity and compromise were necessary for the legislation to pass—the federal government should serve as a model for the rest of the country's employers. The provisions in H.R. 1 are consistent for both the public and private sectors, and I am pleased that Congressional employees are also specifically included.

I am compelled to remind employers that the provisions of this bill apply to only those commercial activities that employ 50 or more employees for each working day during 20 or more calendar workweeks. This excludes almost 95 percent of the businesses in our country. I would also like to stress that the provisions of the bill that apply to 5 percent of the employers are just a minimum;

there is no prohibition to provide more family and medical leave than is mandated.

Taxpayers pay almost \$5 billion because of lost earnings due to denial of parental or medical leave and lack of job security; affected workers must then rely on social benefits which may include welfare, medicaid, and unemployment compensation. The country is not in a position to absorb these mounting costs. Job security is essential. Studies have shown that it is more cost effective for employers to permit employees to return to their original jobs than for employers to hire and train new employees.

Because of our failure to provide family and medical leave, we have forced our workforce to choose between their economic needs and their family needs. We must act immediately to finally reserve this policy.

CONSTANCE A. MORELLA.



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